IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CRIMINAL APPEAL No. 638 of 1989

For Approval and Signature:

HONOURABLE MR.JUSTICE J.R.VORA

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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SUPERINTENDENT OF CUSTOMS
Versus
TAYAB ALI HARUN & ANR

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Appearance :
NOTICE SERVED for Appellant

MR BB NAIK for Appellant
(MR MC KAPADIA) for Opponent No.1
None for Opponents No.2-3
MR SS PATEL APP for Opponent No.4

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CORAM : HONOURABLE MR.JUSTICE J.R.VORA

Date : 22/09/2006

ORAL JUDGMENT

1. This appeal is preferred by the Superintendent of Customs against the judgment and order dated 26th October, 1988 delivered by the learned Sessions Judge, Valsad at Navsari in Criminal Appeal No.20/1987 whereby the appeal came to be allowed and conviction and sentence imposed on the present respondents, were set aside and proceedings were dropped for want of legal sanction.

2. A criminal case came to be initiated by the present appellant, Custom Department against the present respondents in the Court of learned Additional Chief Judicial Magistrate, Valsad being Summary Case No.4/1986 under Section 135 of the Customs Act. The learned Additional Chief Judicial Magistrate, Valsad in the said Summary Case No.4/1986 vide

judgment and order delivered on 2nd June, 1987 convicted all these three respondents being accused of the said summary case under Section 135 of the Customs Act and accused No.1 and 2 were sentenced to undergo rigorous imprisonment of six months and to pay fine of Rs.3,000/-, in default to undergo rigorous imprisonment for one month, while accused No.3 was convicted and sentenced to undergo imprisonment till rising of the Court and to pay fine of Rs.3,000/-, in default rigorous imprisonment for one month. Against which the said Criminal Appeal No.20/1987 came to be filed by the original accused and the present respondents, which came to be allowed on the ground that the prosecution was without jurisdiction for want of sanction and hence, this appeal after obtaining leave of the Court.

3. This appeal is of 1989 and has been adjourned many times. The record shows that previously learned advocate Mr.B.B.Naik was appearing for the appellant – Customs Department, but

thereafter he retired from the proceedings and, therefore, a notice came to be issued to the appellant to make necessary arrangement of learned advocate to represent them in the present appeal. However, this notice is served upon the appellant through Inspector (Legal) Customs Division, Valsad on 29th August, 2006 as per the record of the case, but however, none has cared to represent the appellant and to argue the matter on behalf of the appellant. It appears, therefore, that the appellant has no interest in proceedings further in this appeal.

4. This Court is conscious of the fact that it is not proper to dismiss the appeal in absence of the appellant. But so far as the facts of the present appeal is concerned, they are noted above and further due notice to the appellant is served in respect of this appeal and the appellant has not taken care to proceed with this old matter of 1989 and, therefore, there is no other alternative before this Court to raise hands in

helplessness and to dismiss the appeal.

5. Learned APP Mr.S.S.Patel for the respondent No.4 – State is present and he is heard in this respect.

6. In above view of the matter, this Criminal Appeal stands dismissed with a liberty to apply for restoration of the appeal, if the same is permitted by law and the circumstances so warrants. Bail bonds given by the respondents in pursuance of the order of this Court stand cancelled.

[J. R. VORA,J.]

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